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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 7665/2005

JAGDISH PRASAD SHAH Vs. SUBHASH SHAH & ORS.

Date: 26.07.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Shiv Charan Gupta for the petitioner.
Mr. S.R. Surana and
Ms. Gayatri Rathore for the respondents.

This writ petition is directed against the impugned order dated 31.08.2005 passed by the Additional Sessions Judge (Fast Track) No.1, Jhunjhunu, by which the application filed by the petitioner under Section 151 CPC dated 24.07.2003 has been rejected on the ground that despite ample opportunities to adduce evidence, the petitioner failed to avail the same and also not produced evidence.

Learned counsel for the petitioner reproduced the order sheets dated 03.01.2005, 05.01.2005, 20.01.2005, 27.01.2005 and 31.01.2005 at page-3 of this writ petition to show opportunities which are alleged to be not availed by the petitioner.

Upon perusal of the aforesaid order sheets, it appears that on 03.01.2005 the matter was adjourned on

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account of transfer of the Presiding Officer and on 05.01.2005 again the matter was adjourned as the Presiding Officer was transferred. Further on 20.01.2005 the parties submit that compromise is in progress between the parties and the matter was again listed on 27.01.2005 and on that day also, the parties submit that they have still not arrived at a compromise and ultimately the matter was again fixed for 31.01.2005 and on that date, first time the parties requested to provide opportunity to adduce evidence.

In the instant writ petition, the petitioner has specifically prayed that the Court below be directed to take the evidence of the defendant petitioner which he has already submitted by affidavit and direct the plaintiff respondent to cross examine the defendant petitioner. The petitioner further submits that he will remain present on the date fixed by the Court.

Having gone through the order sheets reproduced by the petitioner, it is not correct that five opportunities were provided to the petitioner to produce evidence. As observed herein above, on two dates the matter was adjourned as the Presiding Officer was under transfer and another two dates were fixed for compromise as requested by the parties. Thus, only one

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chance was provided and on the face value it is wrong to say that five opportunities were provided to the petitioner.

Therefore, in the interest of justice, I deem it proper to provide one chance to the plaintiff respondent to cross examine the defendant petitioner on 10.08.2007 subject to condition that the defendant petitioner will deposit the cost of Rs. 2,500/- and in case the petitioner will not make him available for cross examination on 10.08.2007, in such eventuality, the impugned order dated 31.08.2005 shall remain in force.

In view of the aforesaid observations, the writ petition stands disposed of.

The interim order dated 22.09.2005 granted by this Court also stands rejected.

The application under Article 226(3) of the Constitution of India also stands disposed. The defendant petitioner is directed to remain present on 10.08.2007 for cross examination and the plaintiff respondent is at liberty to cross examine on that day subject to condition of depositing cost as awarded herein above.

(K.S. RATHORE), J.

/KKC/